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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re A.P. et al., Persons Coming Under the
Juvenile Court Law.

H043520
(Santa Cruz County
Super. Ct. Nos. DP003067,
DP003068)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

C.P.,

Defendant and Appellant.

I. INTRODUCTION

C.P. is the mother of the two children who are the subjects of the instant dependency proceedings. The mother appeals from orders made at the six-month review hearing (Welf. & Inst. Code, § 366.21, subd. (e)(1)),¹ at which the juvenile court continued family reunification services but refused to allow the mother to receive a copy of a neuropsychological evaluation report. The mother contends the juvenile court erred by refusing to allow her to receive a copy of the report, which was part of the juvenile

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

case file. For reasons that we will explain, we will remand the matter to the juvenile court with an order to provide the mother with a copy of the neuropsychological evaluation report.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Section 300 Petition and Detention Hearing

On August 7, 2015, the Santa Cruz County Human Services Department (the Department) filed petitions under section 300, subdivisions (b) [failure to protect] and (g) [no provision for support] alleging that the children came within the jurisdiction of the juvenile court. The older child, G.P., was 17 years old. The younger child, A.P., was 14 years old.

The petition alleged that the children had been placed into protective custody after the mother made suicidal statements and said that she was unable to care for the children. The mother, who had a history of psychiatric hospitalizations, had been placed on a section 5150 hold. The father's last known address was in New York and he had failed to provide for the children's safety, supervision, and support.

The investigation narrative attached to the petition reported that the mother was living in her car with the younger child, A.P., and that the older child, G.P., had been living in a play fort or shed in someone's back yard. The children, who were under a great deal of stress, wanted to be placed in foster care. The mother had a prior child welfare case in Washington, which had resulted in the termination of her parental rights as to four other children.

On August 10, 2015, the juvenile court ordered the children detained and placed in the temporary care of the Department.

B. Jurisdiction/Disposition and Neuropsychological Evaluation

The Department filed a jurisdiction/disposition report on September 8, 2015. The older child, G.P., had been placed with a non-related extended family member, and the

younger child, A.P., had been placed in a licensed foster family home. The Department recommended the mother receive reunification services and undergo a neuropsychological evaluation.

At a hearing held on September 8, 2015, the juvenile court ordered a neuropsychological evaluation for the mother. The neuropsychological evaluation referral form indicated that the purpose of the evaluation was to develop appropriate services. The referral form also indicated that the completed evaluation report would be distributed to all parties and all counsel of record.

On November 9, 2015, the Department filed an update regarding the neuropsychological evaluation. The mother had met with the evaluator, Richard Alloy, Ph.D., three times, and Dr. Alloy had provided the Department with a written report. The Department summarized Dr. Alloy's report. The mother had "a chaotic presentation" during the evaluation. The mother remained at risk for suicide and future psychiatric hospitalization, and thus required close and regular monitoring. The mother needed a medication evaluation. She had some hearing issues and needed an audiology or ENT [ear, nose, and throat] consultation. The mother would benefit from parenting classes, vocational education, and therapy. She needed help finding housing and facilitating social contacts.

Dr. Alloy's report was attached to the Department's update. The report was labeled "CONFIDENTIAL" and contains the following statement: "This report is written to be a clinically based communication among professionals. Under no circumstances should it be shown or released to the examinee by anyone other than this examiner. Persons taking actions in spite of this warning will be wholly liable for any damages incurred, psychological or otherwise."

The report contained the mother's self-reported history of her involvement with child protective services, her relationships, the places she had lived, her education and employment, and her mental health and medical treatment. The report described the

results of a mental status examination and neuropsychological testing. The report also listed Dr. Alloy's diagnostic impressions of the mother, which included schizoaffective disorder and personality disorder. The report contained the recommendations listed in the Department's update.

A contested hearing on jurisdiction and disposition was held on November 9, 2015. The juvenile court sustained the allegations of the petition and adopted the Department's recommendations, ordering reunification services. The juvenile court authorized the neuropsychological evaluation report to be released to the mother's therapist.

C. Six-Month Review

The Department filed a six-month review report recommending the mother continue to receive reunification services. The children remained in their placements and were doing well. The mother was still looking for housing and employment. She was participating in counseling and a parenting course, and she had apparently completed a medical evaluation but had not signed a release so that the evaluation could be reviewed by the social worker.

At the six-month review hearing held on April 28, 2016, the mother submitted on the Department's report. The mother's attorney asked the juvenile court to authorize release of Dr. Alloy's report to the mother. The child's attorney stated that a neuropsychological evaluation report is generally released only to the therapist, and she asked that the juvenile court "stick with that protocol." The attorney for the Department asked the juvenile court to request that the therapist review the report and determine if it should be released to the mother. The mother addressed the court, explaining she wanted to review the report so she could be "proactive about [her] own mental health."

The juvenile court denied the mother's request to review the neuropsychological evaluation report, finding that the mother did not "have the right to review that." When the mother continued to ask for the report, the juvenile court reiterated that it did not

believe the mother had “the right to review that.” The juvenile court later stated that it found “good cause” to deny the mother’s request for the report based on a review of the report itself.

In accordance with the Department’s recommendations, the juvenile court ordered the mother’s reunification services to continue.

III. DISCUSSION

The mother contends the juvenile court erred by denying her request to receive a copy of the neuropsychological evaluation report. She contends that under section 827, she had a statutory right to examine and copy the dependency case file, which included the report. She requests we remand this matter with directions to order release of the report.

Section 827 provides that a juvenile case file may be inspected only by certain enumerated persons and entities, including “[t]he minor’s parents or guardian.” (*Id.*, subd. (a)(1)(D).) The parent may also “receive copies of the case file.” (*Id.*, subd. (a)(5).)² A juvenile case file may be inspected by other persons only “by court order of the judge of the juvenile court upon filing a petition.” (*Id.*, subd. (a)(1)(P).) Similarly, California Rules of Court, rule 5.552(b)(1)(D)³ identifies “[t]he child’s parents” as one of the enumerated “individuals and entities” who “may inspect, receive, and copy the juvenile case file without an order of the juvenile court.” Rule 5.552 also specifies the petition procedure to be used by persons not listed as authorized to review a juvenile court file without a court order. (See rule 5.552(c)-(e).)

Section 827 limits access to juvenile case files when “a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law

² The provision regarding copies was added to section 827 in 2007. (Stats. 2007, ch. 468, § 3.) Previously, the statute did not refer to the right to copy a juvenile case file. (See *In re Gina S.* (2005) 133 Cal.App.4th 1074, 1082-1083.)

³ Further rule references are to the California Rules of Court.

or regulation.” (*Id.*, subd. (a)(3)(A); see also Rule 5.552(h).) As the mother points out, in this case the neuropsychological evaluation report was not sealed and the juvenile court did not find that the report was confidential under state or federal law. The Department does not assert that the report was sealed or confidential.

The Department first argues that the mother forfeited her claim by failing to cite to section 827 at the six-month review hearing. The Department cites *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 521, fn. 3 in support of its claim that the mother “failed to make a timely assertion of a potential right.” However, the mother did assert her right to review and copy the neuropsychological evaluation report. Her failure to cite to the correct authority at that time does not result in forfeiture of her claim on appeal. “[T]he doctrine of forfeiture does not apply where, as here, a party raises additional support for a theory that was argued below. [Citation.]” (*Unilab Corp. v. Angeles-IPA* (2016) 244 Cal.App.4th 622, 641, fn. 7; see also *Minich v. Allstate Ins. Co.* (2011) 193 Cal.App.4th 477, 489, fn. 6 [insurer’s failure to cite a particular statute in the trial court did not preclude insurer from relying on that statute on appeal]; *People v. Lexington National Ins. Corp.* (2010) 181 Cal.App.4th 1485, 1491 [party may change theories on appeal “where a question of law is presented on the uncontroverted facts appearing in the record”].)

The Department next claims that the juvenile court had discretion to deny release of the neuropsychological evaluation report. The Department cites to *In re B.F.* (2010) 190 Cal.App.4th 811 (*B.F.*), but that case involved a request by de facto parents, who are not listed in section 827, subdivision (a)(1) as persons or entities entitled to inspect a juvenile case file without filing a petition. (See *B.F.*, *supra*, at p. 814.) The Department also cites to *Lorenza P. v. Superior Court* (1988) 197 Cal.App.3d 607, 611 for the proposition that the juvenile court has the inherent right to control the time, place and manner of inspection of juvenile court files, and to *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006-1007 for the proposition that case plan orders are reviewed for

abuse of discretion. The Department argues that the juvenile court properly exercised its discretion in controlling the manner in which the mother could review the report by limiting her to accessing the report through her therapist. However, the juvenile court's order did not affect only the time, place, or manner of the mother's inspection of the neuropsychological evaluation report, but her general right of access to the report. The juvenile court found that the mother did not have any right to review the report and that there was "good cause" to deny her access to the report. Since the mother was authorized to inspect and receive a copy of the case file under section 827, subdivisions (a)(1)(D) and (a)(5), the trial court erred by denying the mother's request.

IV. DISPOSITION

The matter is remanded to the juvenile court. On remand, the juvenile court shall grant the mother's request for a copy of the comprehensive neuropsychological evaluation report prepared by Richard Alloy, Ph.D.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.

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